**IN THE HIGH COURT OF JUDIATURE AT BOMBAY**
**CRIMINAL APPELLATE JURISDICTION**

**CRIMINAL APPLICATION NO.3108 OF 2004**

Baban Soma Kamble .. Applicant.
Vs.
State of Maharashtra .. Respondent.

Mr.A.P.Mundargi for the applicant.
Mr.D.R.More APP for the respondent.

**CORAM : D.B.BHOSALE, J.**

**DATED : 24TH AUGUST, 2004**

P.C.:

. Heard Mr.Mundargi, learned counsel for the applicant and Mr.More, learned A.P.P. for the respondent.

2. This application is filed by the applicant for being released on bail in C.R.No.26/2003 registered at Gagan Bavade police station under sections 302, 307, 342, 143, 147, 148, 149 and 506 of Indian Penal Code. It is the prosecution case that the present applicant and 7-8 others committed murder of deceased - Laxman Patil and caused grievous injuries to the complainant - Tukaram Toraskar on 19.9.2003. Deceased - Laxman died on 23.9.2003. The occurrence was witnessed by three

witnesses namely Sanjay, Sitaram and Bhagoji. The deceased sufferred two injuries one was on his head and other on shoulder. It is alleged that fatal blow on the head was given by the present applicant with stick. Mr.Mundargi, learned counsel for the applicant submitted that considering the statements of all the witnesses it cannot be said that it was a pre-planned attack by the accused persons on the deceased and the complainant. The accused were not aware that the deceased, informant and others were to go to the house of the co-accused - Police Patil at the relevant time. He further submitted that even if the allegations against the present applicant are taken as true, the offence would not fall under section 302 of Indian Penal Code. Moreover, he invited my attention to the statement of the complainant and contended that though the complainant was an eye witness he did not attribute fatal blow to the applicant. The eye witnesses who have attributed fatal blow to the applicant, there statements, according to Mr.Mundargi, were recorded at belated stage. The occurrence took place on 19.9.2003 whereas the statement of the eye witnesses were recorded on 28.9.2003. Lastly, Mr.Mundargi submitted that the cross complaint under section 324 of Indian Penal Code has been

lodged by one Babu Chowkekar, who is accused no.3 in the instant case, against the complainant and others. In the same incident one or two persons from group of the accused also sufferred serious injuries. I have perused the entire material that was placed before me. Prima facie, what Mr.Mundargi submitted seems to be correct. It was not a pre-planned attack. However, I would not like to express my opinion at this stage of the proceedings as to whether the crime would ultimately fall under section 302 or any other provisions of Indian Penal Code. Keeping in view the statements of the witnesses and considering the submissions of Mr.Mundargi and that the applicant allegedly inflicted, only one blow to the deceased and considering that all other accused have already been enlarged on bail I am inclined to grant this application for bail.

. The applicant is directed to be enlarged on bai on his furnishing a personal bond of Rs.20,000/- with one or two sureties of the like amount to the satisfaction of the trial Court, subject to condition that the applicant shall stay out of Lakhampur and Narveli villages for a period of six months from the date of his release and

shall keep his address informed to the concerned police station where he propose to stay during this period and shall report the nearest police station from his residence on every Saturday between 10 am and 12 noon for six months and thereafter to the concerned police station between 10 am and 12 noon till the conclusion of his trial.

. While passing this order, I shall not be understood to have expressed any opinion on merits of the case. The trial court will deal with the case uninfluenced by the observations made in this order.

. The application is disposed of.

**(D.B.Bhosale, J.)**